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No. 87-886

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Supreme Court of the United States

OCTOBER TERM, 1987

JOHN R. HARGROVE,

Petitioner,

v.

BOARD OF TRUSTEES OF THE MARYLAND RETIREMENT SYSTEM,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COUNTER-STATEMENT OF QUESTION PRESENTED FOR REVIEW

Does a state pension statute which provides different benefits to various categories of state employees violate the equal protection clause of the fourteenth amendment?

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No. 87-886

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1987

JOHN R. HARGROVE,

Petitioner,

v.

BOARD OF TRUSTEES OF THE
MARYLAND RETIREMENT SYSTEM,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

COUNTER-STATEMENT OF THE CASE

Petitioner (plaintiff below), the Honorable John R. Hargrove, a judge of the United States District Court for the District of Maryland, brought this action in the Maryland state courts, claiming that a single provision of Maryland's statutory pension scheme, Ann. Code of Maryland, Art. 73B,

§56(c)(1) ("56(c)(1)"), violates equal protection. Both the trial court and the Maryland Court of Appeals rejected this claim, holding that the Maryland Legislature had a rational basis for establishing a statutory scheme that confers different pension benefits (and burdens) on various classes of state employees.

Prior to his appointment to the federal bench, Judge Hargrove was a Maryland state court judge, and thus a participant in the state judicial pension system. When he retired from state judicial service, Judge Hargrove was eligible "for an annual pension equal to two-thirds of the annual salary of an active [state] circuit court judge." Hargrove v. Board of Trustees of the Maryland Retirement System, 310 Md. 406, 411-12, 529 A.2d 1372, 1374 (1987) (App. 9a-10a) (footnote omitted).[1] The Board of the Maryland Retirement System refused to pay

Judge Hargrove any pension benefits, however, because of §56(c)(1). 310 Md. at 412, 529 A.2d at 1374-75 (App. 10a-11a).

Section 56(c)(1) provides that if a former judge's public income (here federal salary plus state pension) exceeds the current salary of an active state judge, there is a dollar-for-dollar offset of pension benefits for each additional dollar of public employment salary. Judge Hargrove's federal judicial salary is substantially higher than that of state judges; therefore, "§56(c)(1) results in a complete offset so that Judge Hargrove receives no state pension benefits." 310 Md. at 412, 529 A.2d at 1375 (App. 10a-11a).

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[1] Citations to the form "App.___" are to the appendix to the petition for a writ of certiorari.

As the court below noted, the Judicial Pension Plan has certain advantages over the plans for other classes of state employees:

> retired judges may accept permanent post-retirement employment at the state and local level, subject only to an offset, while other retired state employees will lose their pension benefit if they accept certain such permanent employment. The Judicial Pension Plan has the shortest vesting period (i.e., none at all, as vesting is immediate upon accession to the bench), one of the earliest retirement ages, one of the highest benefit levels, and is among the most generous in providing survivor and disability benefits.

310 Md. at 424-25, 529 A.2d at 1381 (43a).

REASONS FOR DENYING THE WRIT

The Petition Fails to Raise Any Substantial Federal Question As To Which There Is Any Uncertainty.

Maryland's pension statute is classic economic or social legislation; therefore, as this Court's equal protection cases make plain, the standard of judicial review is highly deferential. Following settled law, Maryland's highest court properly rejected

the claim that the judiciary should substitute its judgment for that of Maryland's General Assembly on the details of the State's statutory pension scheme. Further review of these settled questions is unwarranted.

In the state courts, petitioner's principal argument was that §56(c)(1) violates state, rather than federal, constitutional guarantees.[2] Implicit in this lack of reliance on the federal constitution was an understanding of this Court's equal protection decisions, holding that social and economic legislation is subject to highly deferential judicial review. See, e.g., Vance v. Bradley, 440 U.S. 93 (1979) (upholding constitutionality of different

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[2] See 310 Md. at 413-14 n.7, 529 A.2d at 1375 n.7 (App.15a n.7) ("Prior to oral argument in this Court, it was unclear whether Judge Hargrove was relying on the federal constitution as well as the state constitution.").

retirement ages for government employees):

> we will not overturn such a statute unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the legislature's actions were irrational.

Id. at 97. See also McGowan v. Maryland, 366 U.S. 420, 425 (1961) ("The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective.").

The Maryland Legislature's action of granting judges more favorable pension rights than those granted to other state employees, e.g., immediate vesting and higher benefit levels, see 310 Md. at 424-25, 529 A.2d at 1381 (43a), was not irrational (and has not been challenged by petitioner). Similarly, it is plainly not irrational for the Legislature to limit the amount of public income a retired judge can receive.

Constitutional challenges to state pension schemes, claiming that it is somehow unconstitutional to provide more favorable benefits to one class of public employees than to another, are not new. There is, in fact, a well-developed body of law, in both the federal and state courts, rejecting such claims.[3] The decision of the Maryland Court of Appeals is fully consistent with prior

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[3] See, e.g., Jackson Firefighters Assoc Local 87 v. City of Jackson, 736 F.2d 209 (5th Cir. 1984) (upholding more liberal pension benefits for employees hired earlier); Ornstein v. Regan, 604 F.2d 212, 215 (2nd Cir. 1979) ("We know of no constitutional requirement that retirement systems having disparate membership and organized under different statutes be operated under the same set of rules."); Allen v. State, 100 Nev. 130, 676 P.2d 792 (1984) (rational basis test applied to uphold statute that raised benefits for future, and not present, retirees); In re Marriage of Alarcon, 149 Cal.App. 3d 544, 196 Cal. Rptr. 887 (1983) (rational basis test applied to determine validity of judicial pension statute that reduced benefits by amount of salary as a federal judge); Clark v. Tawes, 187 Md. 195, 200, 49 A.2d 463, 465 (1946) (pensions for different classes of State employees need not be alike as to all employees).

precedent rejecting challenges to legislative classifications in a pension statute. Indeed, petitioner does not claim to the contrary.

The law in this area is not uncertain, nor is it in need of change. The courts have recognized that the design of pension systems for public employees is a legislative, not a judicial, task. If petitioner's theory were accepted, the inevitable next case would be a claim by a Maryland employee that it violates equal protection to grant judges more favorable pension rights than those granted to non-judges.

The courts below understood that petitioner's arguments about the wisdom of §56(c)(1) are legislative policy arguments, as distinguished from valid constitutional objections. Further review of petitioner's challenge to a single provision of Maryland's statutory pension scheme is unwarranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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